UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEBRA ECARIUS,
Plaintiff,
-vs.-

DEMAND FOR JURY TRIAL

PCS RECEIVABLES CORP
d/b/a PRIME ACCEPTANCE CORP.,
an Illinois corporation,
Defendant.

COMPLAINT & JURY DEMAND

Plaintiff, Debra Ecarius, through counsel, Michigan Consumer Credit Lawyers, by Gary Nitzkin states the following claims for relief:

1. This is an action for damages, brought against a debt collector for violating the Fair Debt Collection Practices Act at 15 U.S.C. § 1692 et seq. ("FDCPA"), Michigan Collection Practices Act at M.C.L. § 445.251 et seq. ("MCPA") and the Michigan Occupational Code at M.C.L. § 339.901 et seq. ("MOC").

JURISDICTION

2. This court has jurisdiction under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692k(d) and 28 U.S.C. §§1331,1337.

3. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims, pursuant to 28 U.S.C. 1367.

PARTIES

4. Plaintiff is a natural person residing in Washtenaw County, Michigan. Plaintiff is a "consumer" and "person" as the terms are defined and used in the FDCPA. Plaintiff is also a "consumer," "debtor" and "person" as the terms are defined and or used in the MCPA and MOC.
5. The Defendant to this lawsuit is PCS Receivables Corporation which is an Illinois company that maintains registered offices in Cook County, Illinois.

VENUE

6. The transactions and occurrences which give rise to this action occurred in Wastenaw County.
7. Venue is proper in the Eastern District of Michigan.

GENERAL ALLEGATIONS

8. Plaintiff had a credit account with Home Care System which she used to purchase goods and/or services for personal, family or household purposes. Any resulting obligation to

pay money was a "debt" as the term is defined and/or used in the FDCPA, MCPA and MOC (“The Debt”).

9. Defendant claims that Plaintiff failed to pay the Debt in full.

10. In 2008, Plaintiff purchased insulation from Home Care System for insulation in her attic in the amount of about $4,800.00. Plaintiff defaulted on her agreement to pay this consumer type debt.

11. Defendant first started contacting Plaintiff attempting to collect this debt sometime in 2009 via letters.

12. Sometime in 2009, Plaintiff made an agreement with Defendant to pay $147.81 a month towards the debt. The parties agreed that Defendant would withdraw $147.81 out of Ms. Ecarius’ checking account on a monthly basis.

13. Sometime in April 2010, Defendant stopped withdrawing these funds from Ms. Ecarius’ checking account.

14. Sometime in December 2013, Defendant called Ms. Ecarius attempting to collect this alleged debt. During this conversation, Defendant’s agent told Ms. Ecarius that she owed $5,723.00 on the debt.

15. In response, Plaintiff denied that she owed this large of a balance and explained that the loan was originally $4,800 and that she had paid it to where the balance should be around $1,800.00. Defendant went through the records and told Plaintiff that she stopped paying them in April 2010 and that at that time, she owed about $1,500.00. Defendant told Plaintiff that now she owed $5,723.00 due to interest and because he had to pay people to run his company. Plaintiff told Defendant that she was not going to pay the debt two times. Plaintiff agreed to pay the $1,500.00 that she owed on the remaining balance

(which was the balance in 2010) but stated that she was not going to pay any more than that.

16. In response, Defendant's agent told Plaintiff that in order to get this started, he needed $591.00 so that he would not proceed with collections. He also stated that they will "start fresh" again and that she could pay them $147.81 a month until the alleged debt was paid off. Defendant told Plaintiff that by the third month of Plaintiff paying Defendant $147.81, that they would contact the credit bureaus and inform them that Plaintiff was making payments toward the alleged debt. Plaintiff agreed to these terms, however, she only agreed to pay them $1,500.00 not the $5,723.00 amount that Defendant claimed she owed.

17. On or about December 5, 2013, Defendant sent Plaintiff a letter attempting to collect this alleged debt. This letter wrongly stated, "…and as of now the amount due and owing under our agreement is $5,723.00, as indicated above, and which is immediately due at this time." The letter also stated, "Please further be advised that Prime Acceptance Corp. will pursue all legal remedies available in order to collect the amount which is due and owing under your account if the account remains delinquent." The top of the letter says in big bold letters, "LEGAL DEPARTMENT."

18. On or about December 28, 2013, Defendant withdrew $591.24 from Plaintiff's checking account, per Plaintiff's consent.

19. On or about January 3, 2014, Defendant withdrew $147.81 from Plaintiff's checking account, per Plaintiff's consent.

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT

20. Plaintiff reincorporates the preceding allegations by reference.

21. At all relevant times Defendant, in the ordinary course of its business, regularly engaged in the practice of collecting debts on behalf of other individuals or entities.

22. Plaintiff is a "consumer" for purposes of the FDCPA and the account at issue in this case is a consumer debt.

23. Defendant is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).

24. Defendant's foregoing acts in attempting to collect this alleged debt violated the following provisions of the FDCPA:

    a. 15 U.S.C. §1692e attempting to collect a debt by false or misleading statements. The parties agreed on a balance of $1,500 due from Plaintiff. Defendant withdrew funds from the Plaintiff’s bank account based upon this agreement and then subsequently attempted to collect $5,723.00 by misrepresenting their agreement in the subsequent letter.

    b. 15 U.S.C. §1692f by attempting to collect an amount not provided for by contract or by law. The parties agreed on a balance of $1,500 due from Plaintiff. Defendant withdrew funds from the Plaintiff’s bank account based upon this agreement and then subsequently attempted to collect $5,723.00 by misrepresenting their agreement in the subsequent letter.

25. The Plaintiff has suffered economic, emotional, general and statutory damages as a result of these violations of the FDCPA.

COUNT II - VIOLATION OF THE MICHIGAN OCCUPATIONAL CODE

26. Plaintiff incorporates the preceding allegations by reference.

27. Defendant is a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).

28. Plaintiff is a debtor as that term is defined in M.C.L. § 339.901(f).

29. Defendant's foregoing acts in attempting to collect this alleged debt violated MCL §339.915e and f in that the parties agreed on a balance of $1,500 and the Defendant attempted to collect a much higher balance; one not owed or ever owed by the Plaintiff.

30. Plaintiff has suffered damages as a result of these violations of the Michigan Occupational Code.

31. These violations of the Michigan Occupational Code were willful.

COUNT III - VIOLATION OF THE MICHIGAN COLLECTION PRACTICES ACT

32. Plaintiff incorporates the preceding allegations by reference.

33. Defendant is a "Regulated Person" as that term is defined in the Michigan Collection Practices Act ("MCPA"), at MCL § 445.251.

34. Plaintiff is a "Consumer" as that term is defined at MCL § 445.251.

35. Defendant's foregoing acts in attempting to collect this alleged debt violated MCL §445.252e and f in that the parties agreed on a balance of $1,500 and the Defendant attempted to collect a much higher balance; one not owed or ever owed by the Plaintiff.

36. Plaintiff has suffered damages as a result of these violations of the MCPA.

37. These violations of the MCPA were willful.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action.

DEMAND FOR JUDGMENT FOR RELIEF

Accordingly, Plaintiff requests that the Court grant him the following relief against the defendant:

a. Actual damages.

b. Statutory damages.

c. Treble damages.

d. Statutory costs and attorney fees.

Respectfully submitted,

February 6, 2014

/s/ Gary Nitzkin
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